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CHARLES ELMORE CROPLEY
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No. 108

In the Supreme Court of the United States

OCTOBER TERM, 1935

JOSEPH E. SWANSON ET AL., TRUSTEES OF THE LAKE VIEW LAND ASSOCIATION, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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JOSEPH E. SWANSON ET AL., TRUSTEES OF THE LAKE VIEW LAND ASSOCIATION, petitioner

v.

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MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

The question presented is whether the Lake View Land Association is to be taxed as an association or as a trust.

The Lake View Land Association was created under a trust agreement, whereby a three-story apartment building was transferred to three trustees. The trustees were given exclusive power to manage and control the property; to exchange any or all of the real estate for any other property; to

erect, tear down, alter, reconstruct, or improve at their discretion; to borrow money and to secure its payment by mortgage on the property; and to sell all or any portion of the property. They were also given the right to hire suitable offices and to employ such agents for the transaction of the business of the trust as they might deem advisable. The trust was to expire twenty years after the death of the last survivor of several named persons, or might be earlier terminated by the trustees selling all of the property and distributing the net proceeds. One thousand shares of a par value of $100 each were issued, on which it was specifically provided that such receipts were evidences of the ownership of personal property and not real estate. Shares were transferable by assignment, by the surrender of the receipt, and a notice of such assignment was required to be kept on the written register of the names and addresses of the holders of such receipts. The agreement could be amended at any time by three-fourths of the registered beneficiaries.

The court below held, correctly, we submit, that the Lake View Land Association was a corporation in everything but the name and seal and the fact that its business was carried on without holding formal meetings, adopting resolutions, and keeping minutes.

However, in view of the fact that the Government applied for certiorari in the case of *Helvering* v. *Coleman-Gilbert Associates*, Nos. 78–79, alleging a

substantial conflict between that and the instant case, we do not feel warranted in opposing the petition. However, if the petition in Nos. 78–79 be denied, we respectfully submit that the petition in the instant case should also be denied.

STANLEY REED,
Solicitor General.
FRANK J. WIDEMAN,
Assistant Attorney General.
JAMES W. MORRIS,
A. F. PRESCOTT,
Special Assistants to the Attorney General.

JULY 1935.

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